

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 09CA10
	:	
vs.	:	Released: June 24, 2010
	:	
JAMIE L. BELVILLE,	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
Defendant-Appellant.	:	

APPEARANCES:

Timothy Young, Ohio State Public Defender, and Katherine A. Szudy, Assistant Ohio State Public Defender, Columbus, Ohio, for Defendant-Appellant.

C. Jeffrey Adkins, Gallia County Prosecuting Attorney, Gallipolis, Ohio, for Plaintiff-Appellee.

McFarland, P.J.:

{¶1} Defendant-Appellant, Jamie L. Belville, appeals the decision of the Gallia County Court of Common Pleas finding her guilty of burglary. Belville contends there was error below in that 1) the trial court improperly allowed latent-fingerprint identification evidence when such evidence is inherently unreliable; and 2) the jury's decision to convict was against the manifest weight of the evidence. After a thorough review of the record, we

overrule both assignments of error and affirm the decision of the court below.

I. Facts

{¶2} During early morning hours, while Mike and Betty Jo Carter slept, someone entered their home and stole numerous items, including jewelry, cash, credit cards, Indian artifacts, all which were taken from the home, and a cell phone and dirt bike which were taken from the garage. When detectives investigated the crime scene, they discovered a fingerprint on a glass display case that had held some of the Indian artifacts. The fingerprint was lifted with print tape and submitted to the Bureau of Criminal Identification and Investigation (BCI).

{¶3} Subsequent investigation showed that several phone calls had been made from the stolen cell phone soon after the burglary occurred. Detective Sergeant Jeff Boyer spoke with several of the recipients of those phone calls. As a result of information Boyer obtained during those conversations, Belville became a suspect in the burglary. After discovering Belville was already in Gallia County Jail on an unrelated charge, Boyer went to interview her.

{¶4} After interviewing Belville, Boyer examined the items that had been in Belville's possession when she was booked into jail. Among her

possessions were a watch, a bracelet, and a necklace with a pendant. Mrs. Carter later identified those three items and confirmed that they were among the objects stolen during the burglary. Additionally, BCI identified the fingerprint that had been lifted from the display case as belonging to Belville. As a result, Belville was charged with one count of burglary under R.C. 2911.12(A)(1), a second-degree felony, and due to the theft of the dirt bike, one count of theft under R.C. 2913.02(A)(1), a fourth-degree felony.

{¶5} The matter proceeded to jury trial. Belville objected when the prosecution's first witness, Robin Roganbeck, a fingerprint identification expert from BCI, was called. The trial court then held an Evidence Rule 702 motion hearing outside the presence of the jury. At the conclusion of the hearing, the trial court decided to allow Roganbeck to testify as an expert in latent-fingerprint identification. The jury subsequently found Belville guilty of burglary and the trial court sentenced her to an eight-year prison term - the term to run consecutively to sentences imposed in two other, unrelated, cases against Belville, for an aggregate sentence of ten years in prison.¹

II. Assignments of Error

First Assignment of Error

THE TRIAL COURT ABUSED ITS DISCRETION BY
PERMITTING THE STATE TO PRESENT UNRELIABLE,

¹ At the close of the State's case-in-chief, the theft charge concerning the dirt bike was dismissed without objection from the State.

LATENT-FINGERPRINT IDENTIFICATION EVIDENCE TO THE JURY.

Second Assignment of Error

THE TRIAL COURT VIOLATED MS. BELVILLE'S RIGHTS TO DUE PROCESS AND A FAIR TRIAL WHEN IT ENTERED A JUDGMENT OF CONVICTION FOR BURGLARY, WHICH WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND SECTION 16, ARTICLE I OF THE OHIO CONSTITUTION.

III. First Assignment of Error

{¶6} In her first assignment of error, Belville argues that the trial court erred in allowing the State to present expert testimony regarding the latent-fingerprint which was found at the crime scene. We first state the appropriate standard of review.

{¶7} “The determination of the admissibility of expert testimony is within the discretion of the trial court. Evid.R. 104(A). Such decisions will not be disturbed absent abuse of discretion.” *Valentine v. Conrad*, 110 Ohio St.3d 42, 2006-Ohio-3561, 850 N.E.2d 683, at ¶ 9. “ ‘Abuse of discretion’ suggests unreasonableness, arbitrariness, or unconscionability. Without those elements, it is not the role of this court to substitute its judgment for that of the trial court.” *Id.*

{¶8} Belville's argument, that the trial court erred in allowing the State's expert witness to testify regarding the latent-fingerprint evidence, is

wholly based upon the premise that such evidence is unreliable. Belville contends that after examining the methodology and principles of latent-fingerprint identification during the Rule 702 hearing, the trial court should have excluded the fingerprint evidence. But had the court so ruled, that ruling would have flown in the face of uncounted criminal prosecutions that have, for decades, relied on such evidence.

{¶9} Though Belville cites law review and newspaper articles which call into question various aspects of the use of fingerprint identification evidence, she cites not a single case supporting her position that such evidence is unreliable. In contrast, Ohio courts, including the Supreme Court, have clearly determined that such evidence is reliable and admissible under Evid.R. 702. “[T]he reliability of fingerprint evidence is well established.” *State v. Davis*, 116 Ohio St.3d 404, 2008-Ohio-2, 880 N.E.2d 31, at ¶140, quoting *State v. Foust*, 105 Ohio St.3d 137, 2004-Ohio-7006, 823 N.E.2d 836, at ¶93. “[I]t is well known and accepted that latent-fingerprint identification satisfies the standard of reliability.” *State v. Nunley*, 6th Dist. No. H-08-018, 2009-Ohio-4597, at ¶21. “[T]he Ohio Supreme Court in *State v. Miller*, has recognized the use of fingerprints for identification purposes in criminal cases, stating ‘fingerprints corresponding to those of the accused are sufficient proof of his identity to sustain his

conviction, where the circumstances show that such prints, found at the scene of the crime, could only have been impressed at the time of the commission of the crime.’ * * * This court and other appellate courts have similarly ruled on the sufficiency of fingerprint evidence.” *State v. Boone*, 6th Dist. No. L-08-1409, 2010-Ohio-1481, at ¶16, quoting *State v. Miller* (1977), 49 Ohio St.2d 198, 361 N.E.2d 419, at the syllabus.

{¶10} We agree with, and to the extent that the Supreme Court of Ohio has ruled on the issue, are bound by the cases cited above. Accordingly, we reject Belville's argument that the trial court should have excluded the fingerprint evidence on the basis that such evidence is unreliable. The trial court's decision to allow the latent-fingerprint evidence was clearly not an abuse of discretion. As such, Belville's first assignment of error is overruled.

IV. Second Assignment of Error

{¶11} In her second assignment of error, Belville contends the jury's verdict was against the manifest weight of the evidence. “The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different.” *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541. Sufficiency tests the adequacy of the evidence, while weight tests “the inclination of the greater

amount of credible evidence, offered in a trial, to support one side of the issue rather than the other[.]” *State v. Sudderth*, 4th Dist. No. 07CA38, 2008-Ohio-5115, at ¶27, quoting *Thompkins* at 387.

{¶12} “Even when sufficient evidence supports a verdict, we may conclude that the verdict is against the manifest weight of the evidence, because the test under the manifest weight standard is much broader than that for sufficiency of the evidence.” *State v. Smith*, 4th Dist. No. 06CA7, 2007-Ohio-502 at ¶41. When determining whether a criminal conviction is against the manifest weight of the evidence, we “will not reverse a conviction where there is substantial evidence upon which the [trier of fact] could reasonably conclude that all the elements of an offense have been proven beyond a reasonable doubt.” *State v. Eskridge* (1988), 38 Ohio St.3d 56, 526 N.E.2d 304, paragraph two of the syllabus. See, also, *Smith* at ¶41. We “must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial granted.” *Smith* at ¶41, citing *State v. Garrow* (1995), 103 Ohio App.3d 368, 370-371, 659 N.E.2d 814; *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. However, “[o]n the trial

of a case, * * * the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts.” State v. DeHass (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

{¶13} In this assignment of error, to a large extent, Belville relies on the same argument she asserted in her first assignment of error, that the fingerprint evidence placing her at the scene was not reliable. Again, we reject the argument that latent-fingerprint evidence is inherently unreliable. But in addition to expert testimony that Belville's fingerprint was found at the scene, the jury was presented with additional powerful evidence indicating guilt. Namely, Belville had in her possession three items which were stolen during the burglary.

{¶14} Accordingly, after reviewing the entire record and keeping in mind that determining witness credibility and weighing the evidence are issues primarily for the finder of fact, we find there was substantial evidence upon which the jury could reasonably conclude that Belville was guilty of burglary. As such, Belville's second assignment of error is also overruled.

V. Conclusion

{¶15} In our view, Belville fails to support either of her assignments of error. Because the trial court did not abuse its discretion in allowing latent-fingerprint identification evidence when, under Ohio law, such

evidence has been found to be reliable and admissible, her first assignment of error has no merit. Because the jury had substantial evidence to reasonably conclude that Belville was guilty of burglary, her second assignment of error also fails. Accordingly, we affirm the decision of the court below.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the **JUDGMENT BE AFFIRMED** and that the Appellee recover of Appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Gallia County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.
Exceptions.

Abele, J. and Kline, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____

Matthew W. McFarland
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.